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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Harvey R. Kauffman,	)	Petition Nos.: 20-017-94-3-7-00003
	)	20-005-95-3-7-00012
Petitioner,	)	20-005-96-3-7-00014
	)	20-005-97-3-7-00016
v.	)	20-005-98-3-7-00019
	)	20-005-99-3-7-00013
Cleveland Township Assessor,	)	
	)	Parcel: Personal Property
Respondent.	)	
	)	County: Elkhart
	)	Township: Cleveland
	)	Assessment Years: 1994-1999
	)	

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Appeal from the Final Determination of  
Elkhart Property Tax Assessment Board of Appeals

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**August 6, 2004**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the “Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**PROCEDURAL HISTORY**

1. Pursuant to Ind. Code § 6-1.1-15-12, Harvey R. Kauffman (“Petitioner”) filed Form 133 Petitions for Correction of an Error for 1994-1999 assessment years, petitioning the Board to conduct an administrative review of the above petition. The Form 133 petitions were filed on August 31, 2001. The determinations of the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) were issued on or after August 23, 2001.

## **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was scheduled for June 9, 2004, in Goshen, Indiana. The Notices of Hearing on Petition were mailed to the Petitioner at the address listed on the Form 133 petitions. The Notices of Hearing were mailed, with proof of mailing, on March 30, 2004.
3. On June 9, 2004, Joseph Stanford, the duly designated Administrative Law Judge (the “ALJ”) authorized by the Board under Ind. Code § 6-1.5-3-3, conducted the hearings on the Form 133 petitions. The Petitioner did not appear at the hearing.
4. The Petitioner did not contact the Board or the ALJ prior to the scheduled hearing date and did not request a continuance of the hearing.
5. The ALJ verified that Notices of Hearing were mailed with proof of mailing. The ALJ also verified that the Notices of Hearing were not returned to the Board as not deliverable.
6. The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – The Form 133 petitions
  - Board Exhibit B – Notices of Hearing dated March 25, 2004
  - Board Exhibit C – Proof of mailing.

## **JURISDICTIONAL FRAMEWORK**

7. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
8. The Board is authorized to issue this final determination, findings of fact and conclusions of law pursuant to Ind. Code § 6-1.5-4-1.

## BOARD REVIEW AND PETITIONER'S BURDEN

9. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board bases its decision upon the evidence presented and the issues raised during the hearing. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
10. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products*, 704 N.E.2d at 1119; *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
11. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. *See Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1024-1025 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
12. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the Board in its evaluation of the evidence. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
13. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner

has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

#### **SUMMARY OF FINAL DETERMINATION**

14. The Form 133 petitions are denied for the failure of the Petitioner to appear at the hearing and present evidence in support of the alleged errors of assessment.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

#### **IMPORTANT NOTICE**

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.